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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/711,710  | 09/30/2004  | Robert Africa        | 188444/US/2         | 5709             |
| 20586 7590 08/08/2008<br>DORSEY & WHITNEY, LLP<br>INTELLECTUAL PROPERTY DEPARTMENT<br>370 SEVENTEENTH STREET<br>SUITE 4700<br>DENVER, CO 80202-5647 |             |                      |                     |                  |
| EXAMINER  |             |                      |                     |                  |
| HOEY, ALISSA L  |             |                      |                     |                  |
| ART UNIT  |             | PAPER NUMBER         |                     |                  |
| 3765  |             |                      |                     |                  |
| MAIL DATE   |             | DELIVERY MODE        |                     |                  |
| 08/08/2008  |             | PAPER                |                     |                  |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

## Application No.

10/711,710

## Applicant(s)

AFRICA ET AL.

## Examiner

Alissa L. Hoey

## Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 13-19, 50 and 55-58 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 13-19, 50 and 55-58 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/S508)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 06/06/08 has been entered, including drawing and specification amendments.

### ***Specification***

1. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: "...and including a garment facing side contacting a body facing side of the first cloth layer" (claim 13), "the at least one foam pad including a garment facing side contacting a body facing side of the first foam layer and a body facing side contacting a garment facing side of the second cloth layer" (claim 13) and "...the garment facing side of the first foam layer solely contacts the body facing side of the first cloth layer; the first foam layer defines a first perimeter; the at least one foam pad defines a second perimeter; and the first perimeter encompasses the second perimeter" (claim 58).

*Applicant has argued that figures 1 and 2 show the above limitations and that paragraph 23-26 show antecedent basis.*

*Examiner notes that the figures display the above limitations, but there is no antecedent basis for these limitations in the specification in paragraphs 23-26. Applicant should amend the language of the above claim limitations into the specification.*

**Claim Rejections - 35 USC § 102**

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 13,15, 17 and 55 are rejected under 35 U.S.C. 102(b) as being anticipated by Forsyth et al. (US 6,565,702).

In regard to claim 13, Forsyth et al. teaches a chamois comprising a first cloth layer (35), the first cloth layer (35) being relatively elastic and having a garment facing side (figure 17: column 2, lines 57-61). A second cloth layer (41, 79, 80), the second cloth layer being relatively elastic (41) and having at least one relatively inelastic portion (79, 80). The second cloth layer (41, 79, 80) having a body facing side (figure 17). A first foam layer (end portion of 36), the first foam layer (36) coupled to the first cloth layer (35) and located between the first cloth layer (35) and the second cloth layer (41). The first foam layer (36) being relatively elastic such that the chamois stretches (column 6, lines 54-61). At least one foam pad (39, 40) being coupled to the first foam layer (36) between the first foam layer (36) and the second cloth layer (41). The at least one foam pad (39, 40) substantially aligned with the at least one relatively inelastic portion (79,

80), such that the at least one foam pad is inherently inhibited from stretching (figure 17).

Further, Forsyth et al. teaches the first foam layer (36) coupled to the first cloth layer (35) and including a garment facing side contacting a body facing side of the first cloth layer (see figure 17, identifiers 36 and 35 contact each other). The at least one foam pad (40, 39) including a garment facing side contacting a body facing side of the first foam layer (36) and a body facing side contacting a garment facing side of the second cloth layer (see figures 17, pad (39, 40) contacts layer 41, 80, 79 and pads (40, 39) contact body facing side of the first foam layer at the sides portions when all attached together).

In regard to claim 15, Forsyth et al. teaches the at least one foam pad (39, 40) being relatively elastic (column 6, lines 32-39 and column 3, lines 19-38).

In regard to claim 17, Forsyth et al. teaches the first cloth layer (35) comprising a relatively inelastic portion substantially aligned with the at least one foam pad (construction of foam pad with first cloth layer would produce a relatively inelastic portion of first cloth layer).

In regard to claim 55, Forsyth et al. teaches a second foam layer (middle portion of 36) coupled to the second cloth layer (41) and located between the at least one foam pad (39, 40) and the second cloth layer (41). The second foam layer (36) being relatively elastic such that the chamois stretches (column 6, lines 54-61).

In regard to claim 56, Forsyth et al. teaches the first foam layer (36: end segment) and the second foam layer (36: middle segment) comprising the same type of foam (column 6, lines 54-61).

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 14, 18, 19, 50 and 56-58 are rejected under 35 U.S.C. 103(a) as being unpatentable over Forsyth.

Forsyth teaches the padded garment as described above in claim 13.

In regard to claim 58, Forsyth teaches different embodiments of a padded garment. The embodiment used to reject claim 13, does not provide the foam layer solely attached to the first cloth layer. However, Forsyth does teach the foam layer solely attached to the first cloth layer in another pad embodiment (see figure 19, identifiers 35, 36).

It would have been obvious to have provided the pad of Forsyth with foam layer extending entirely along the first cloth layer of Forsyth, since the pad of Forsyth provided with a fully extending foam layer would provide for a pad that provides additional protection along the entire length of the cloth layer and not just in certain spots.

In regard to claim 14, Forsyth et al. teaches the at least one foam pad (39, 40) being relatively inelastic (column 6, lines 32-39 and column 3, lines 19-38).

In regard to claim 18, Forsyth et al. teaches the at least one foam pad (39, 40) being relatively denser than the elastic foam layer (column 6, lines 24-61).

In regard to claim 19, Forsyth et al. teaches the at least one foam pad comprises multiple densities at least one of which is denser than the elastic foam layer (see pads 39, 40 and column 6, lines 24-61).

In regard to claim 50, Forsyth et al. teaches the chamois being flexible (column 2, lines 1-5).

In regard to claim 57, Forsyth et al. teaches the first foam layer (36) coupled to the second cloth layer (41).

6. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Forsyth et al. in view of Garneau (US 2005/0210570).

Forsyth et al. teaches a chamois as detailed above. However, Forsyth fails to teach the second cloth layer containing an anti-microbial material.

Gameau teaches a chamois having a second cloth layer to be contact with the user's skin containing an anti-microbial material (paragraph 0047).

It would have been obvious to have provided the chamois of Forsyth et al. with the second cloth layer containing anti-microbial material, since the chamois of Forsyth et al. provided with the second cloth layer containing anti-microbial material would provide a chamois that not only protects the user's skin and body from a bike seat, but also provides protection against the formation of bacteria.

***Response to Arguments***

7. Applicant's arguments filed 06/06/08 have been fully considered but they are not persuasive.

I) Applicant argues that Forsyth et al. fails to teach "the at least one foam pad including a garment facing side contacting a body facing side of the first foam layer".

Examiner disagrees, since Forsyth et al. teaches a foam pad (39, 40) with a garment facing side (edges of pad including the bottom and side edge of the pads 39, 40) which contacts the body facing side of the first foam layer (36).

The pads (39, 40) have garment facing edges, which includes the side edges of the pads. The side edges of the pads (39, 40) are in contact with a body facing side of the first foam layer (top side of 36). The top side of foam layer (36) is in contact with the body facing side of foam pad (39) as can be seen in figure 17 (side of pad 39 contacting top corner of foam layer 36).

II) Applicant argues that Garneau used in combination with Forsyth would not provide the invention as claimed.

Examiner notes that Garneau is used to teach antimicrobial material in a padding construction of a cycling garment. The antimicrobial material of Garneau is used to protect the user from the formation of bacteria. It would be obvious to one having ordinary skill in the art to have provided the antimicrobial material to protect the user from the formation of bacteria as taught in Garneau and applied the antimicrobial material to the material of Forsyth.



***Conclusion***

8. All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alissa L. Hoey whose telephone number is (571) 272-4985. The examiner can normally be reached on M-F (8:00-5:30)Second Friday Off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gary Welch can be reached on (571) 272-4996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3765

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

ALH

/Alissa L. Hoey/  
Primary Examiner, Art Unit 3765